

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the Matter of )

Billed Party Preference )  
for 0+ InterLATA Calls )

CC Docket No. 92-77

Federal Communications Commission  
Office of the Secretary

**REPLY COMMENTS OF ZERO PLUS DIALING, INC.**

Zero Plus Dialing, Inc. ("ZPDI"), by its undersigned counsel, hereby submits its reply comments in response to the initial comments filed regarding the Commission's proposed rule for proprietary calling cards and 0+ access set forth in the Notice of Proposed Rulemaking ("NPRM") in the above-referenced proceeding.

Numerous parties firmly support prompt action by the Commission to undo the consumer and competitive harm that AT&T's issuance of CIID cards has created in the operator services market. Clearly, AT&T structured the CIID card program to serve its competitive interests on two fronts: first, to enable AT&T to recapture a monopoly in the aggregator presubscription market to the detriment of continued operator services competition; and second, to lead consumers to believe mistakenly that AT&T's CIID calling cards provide the same universal access as LEC calling cards used on a 0+ basis at all locations.<sup>1/</sup>

<sup>1/</sup> See, e.g., Comments of ZPDI at 1-5; Comments of MCI Communications Corporation at 1-4; Comments of Sprint Communications Company ("Sprint") at 2-3; Joint Comments of Cleartel Communications, Inc. and Com Systems, Inc. at 3-5; Comments of Bell Atlantic at 2 (AT&T's CIID card marketing practices "have been misleading and unfair"); Comments of LDDS Communications, Inc. at 4-6; Comments of the Competitive Telecommunications Association ("CompTel") at 2-6.

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The record support for the Commission's proposed rule shows beyond question an urgent need for adoption of the proposed rule to halt AT&T's anti-competitive actions, and to provide regulatory certainty with respect to all IXC proprietary cards that can be used on a 0+ basis. Implementation of the rule would resolve consumer and competitive problems created by such 0+ proprietary IXC cards by affording any IXC issuing such cards the option of either (1) sharing billing and validation information for the cards with other IXCs; or (2) restricting card use to access code dialing.

ZPDI's comments on the specific issues the Commission raised in the NPRM regarding the proposed rule have demonstrated that provision of billing and validation information for AT&T's CIID cards with other IXCs is readily capable of implementation with safeguards to assure the confidentiality of each IXC's data.<sup>2/</sup> With respect to the other option - - creating a truly proprietary card -- ZPDI and other parties have also addressed the need for the Commission to refine the rule with several additional requirements if AT&T chooses to restrict the use of the cards to access code dialing and maintain proprietary status for the CIID cards. These refinements include requiring AT&T (1) to re-issue the cards with correct dialing instructions approved by the Commission; (2) to reject 0+ calls made using the cards; and (3) to cease permitting the LECs and other IXCs (such as Airfone) to accept AT&T's "proprietary" card. It is critical that the Commission adopt these measures to ensure that consumers are properly re-educated to use the CIID cards with access codes, and that AT&T's cards are truly proprietary.

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<sup>2/</sup> See ZPDI Comments at 10-12.

## **DISCUSSION**

### **1. AT&T's claim that provision of validation and billing information requires release of proprietary customer information is without substance**

AT&T claims that the proposed rule is anti-competitive and would harm the interests of its customers. In particular, AT&T asserts that it would be anti-competitive if the Commission requires it to make its proprietary technology, development and customer data available to other IXCs.<sup>3/</sup> Indeed, AT&T claims that "there is no circumstance in which AT&T could envision making its calling card data available for validation and billing by its OSP competitors."<sup>4/</sup> ZPDI's initial comments anticipated this objection to the proposed rule and proposed a specific mechanism by which AT&T could share validation and billing information for the CIID cards without threatening the proprietary nature of AT&T's customer information and technology.<sup>5/</sup>

### **2. AT&T has no right to usurp the 0+ dialing method to guarantee users access to its service**

AT&T also asserts that it seeks to assure access to AT&T's services through issuance of proprietary cards. AT&T should not be permitted to usurp the 0+ dialing method in order to do so. 0+ dialing has long been recognized by consumers as a form of access not necessarily tied to their chosen IXC. Indeed, this was the case even prior to any operator service competition, when consumers reached AT&T for interLATA 0+ dialing, even though their preferred carrier at home or office may have been another carrier. It is critical for

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<sup>3/</sup> See AT&T Comments at 4.

<sup>4/</sup> Id. at 5.

<sup>5/</sup> See ZPDI Comments at 10-12.

consumers that the Commission assure a continued consistent and uniform dialing plan so that they will be able to assess their options and make appropriate choices among carriers.<sup>9/</sup>

All other IXC's issuing calling cards recognize the reality of aggregator 0+ presubscription and instruct their cardholders to dial an access code to reach their networks. Subscribers seeking to reach a particular IXC utilizing such IXC proprietary cards never even reach the network of the presubscribed carrier and therefore do not impose costs on that carrier while trying to reach their own. By contrast, AT&T ignores the plain reality that, so long as aggregators presubscribe their 0+ traffic to multiple IXC's, no single carrier can assure cardholders that dialing 0+ will reach its network. No other carrier makes that mistake. Unlike AT&T's marketing claim for its 0+ cards, other IXC cards actually do assure users that they will reach the issuing carrier's network. AT&T could have chosen to issue similar proprietary cards, but of course to have done so would not have provided anti-competitive side benefits of imposing costs on competitors, making its customers captive, and increasing the number of calls for which only it can compensate aggregators.

Moreover, as a practical matter, AT&T is simply wrong when it claims that all other IXC's are "free" to use a 0+ dialing method and that Sprint has recently done so.<sup>1/</sup> No IXC other than AT&T, which still serves the vast predominance of aggregator locations could

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<sup>9/</sup> See Comments of the Pacific Companies at 4-5 (through 0+ interLATA mutuality, consumers would benefit from the ability to dial 0+ from all stations unless they choose to access a particular carrier using a proprietary card with access code dialing).

<sup>1/</sup> AT&T apparently believes that Sprint's issuance of a calling card used with 10XXX access and usable on a 0+ basis at locations presubscribed to Sprint lends credence to its arguments. Sprint, however, always instructs its customers to use access codes, notwithstanding that it is technically possible for them to reach Sprint's network using 0+ at such presubscribed telephones. See Sprint Comments at 8.

possibly issue such an instruction -- consumers would very soon find valueless a 0+ calling card that only reached the issuing carrier at a tiny fraction of all aggregator locations.

Finally, contrary to AT&T's marketing and arguments to the Commission, AT&T's card, even as currently issued, does not assure access to its services. AT&T permits LECs, and at least one other IXC -- Airfone -- to accept its cards for services provided over their respective services at their respective rates. Clearly, if it truly seeks a proprietary card, AT&T should be required to maintain it as such. It should not be permitted to pick and choose whether to make exceptions for other carriers.

**3. Claims that screening and blocking of 0+ dialed calls is infeasible must be carefully scrutinized by the Commission**

AT&T claims that screening calls to block 0+ dialed CHID card calls is technically infeasible because it cannot currently distinguish 10XXX access code calls from 0+ calls.<sup>8/</sup> A number of LECs also point to this network screening limitation in their comments.<sup>9/</sup> The Commission should require additional information from the LECs and AT&T to address this issue before accepting the claims at face value. No party has documented the claim, or provided specific cost information regarding the potential implementation of a system whereby the LECs would pass information to AT&T enabling it to screen the calls.<sup>10/</sup>

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<sup>8/</sup> See AT&T Comments at 8.

<sup>9/</sup> See, e.g., Comments of the NYNEX Telephone Companies at 2-3; Comments of the Ameritech Operating Companies at 3.

<sup>10/</sup> The importance of obtaining accurate information on this issue from the LECs cannot be overstated. For example, in its recent order in AT&T Communications Revisions to Tariff F.C.C. No. 1, Transmittal Nos. 3380, 3537, 3542 and 3543, CC Docket No. 92-95, Memorandum Opinion and Order FCC 92-226 (released June 2, 1992) ("AT&T Tariff Investigation Order"), the Commission found, contrary to AT&T's claims, that LECs were fully capable technically and operationally to continue to include LEC card usage in the calculation of charges pursuant to (continued...)

Even assuming that such screening is not reasonably available in the near term, the Commission should still adopt the proposed rule. In that case, the inability to screen 0+ dialed calls simply reinforces the need for a requirement that AT&T re-issue its calling cards with correct dialing instructions if it chooses to restrict them to access code calling.

**4. AT&T's purported concern for its subscribers is belied by its actions**

AT&T repeatedly contends that it has acted fairly in issuing its CIID cards with 0+ dialing instructions, and that other IXCs are free to do exactly what it has done.<sup>10/</sup> To the contrary, AT&T's good faith in issuing cards and purportedly acting in the best interests of its subscribers have been called into serious question in both this proceeding and in a tariff investigation of CIID card calling discounts recently concluded by the Commission.<sup>12/</sup>

Indeed, despite specific Commission request for further justification, AT&T has largely left unexplained its claim in CC Docket No. 91-115 that it was required to inform consumers to destroy their old shared use calling cards pursuant to Regulation Z.<sup>13/</sup>

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<sup>10/</sup>(...continued)

AT&T optional calling plans, or could rectify this technical infirmity in the near term. See id. at n.56.

<sup>11/</sup> See AT&T Comments at 5-6; AT&T Reply Comments in Opposition to the CompTel Emergency Motion in CC Docket No. 91-115 (filed Mar. 11, 1992) ("AT&T Reply Comments") at 7 (incorporated in the record herein, NPRM at n.41).

<sup>12/</sup> See, e.g., CNS Comments at n.14; Comments of International Telecharge, Inc. at 7-13. See also Joint Comments of AmeriCall Systems of Louisville, Cleartel Communications, Inc., First Phone of New England, Inc., U.S. Long Distance, Inc., in CC Docket No. 91-115 (filed Aug. 15, 1991) at Attachment 2, AT&T Texas Marketing Letter ("In order to comply with government requirements, AT&T is no longer sharing card numbers with your local telephone company.").

<sup>13/</sup> See AT&T Reply Comments (filed Mar. 11, 1992) at 6 n.\*\*\*; AT&T Tariff Investigation Order at n.51. AT&T has never explained this conclusion, despite the Commission's statement that it is investigating the claim in this docket. Id. Moreover, Capital Network System has  
(continued...)

Moreover, several parties have questioned AT&T's compliance with the intent of the Commission's requirement that all operator service providers provide consumers with the alternative of an 800 or 950 access code.<sup>14/</sup>

AT&T's attempt to defend its actions by trying to lump all of its competitors together as "rip offs" engaging in "covert" actions is also a smoke screen.<sup>15/</sup> A number of ZPDI's IXC customers charge rates at or below AT&T's, even though many of their costs are above those of the dominant carrier. Indeed, the comments of LDDS Communications, Inc. demonstrate that the effect of the CIID card is to keep AT&T's customers captive to higher rates.<sup>16/</sup> Moreover, AT&T's generalization ignores the fact that a benefit of competition has been to deploy pay telephones at higher cost/lower use locations which were not profitable enough to warrant a LEC or AT&T payphone. AT&T's argument assumes that a caller would not be willing to pay the higher cost for the convenience of having a telephone at all. AT&T's generalizations must be rejected.

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<sup>13/</sup>(...continued)

pointed out that, regardless of whether Regulation Z applies to the calling cards, AT&T's assertion that the CIID cards represent an "exchange" for LEC joint use cards demonstrates AT&T's belief that its CIID cards are comparable to LEC joint use cards. As such, AT&T's CIID cards should receive equal regulatory treatment with respect to nondiscriminatory billing and validation access requirements. See CNS Comments at 11-12.

<sup>14/</sup> The 800 number being used by AT&T to "comply" with the Commission's order is by no means an access code as envisioned by the Commission. The Commission need only dial AT&T's access (e.g., 800-CALL-ATT or 800-ATT-CARD) to see that AT&T has failed to provide a convenient and reasonable alternative to its problem-ridden 10XXX access, thereby calling into question the sincerity of its purported concern for its subscribers. See also Cleartel and Com Systems Comments at n.6; CNS Comments at n.13.

<sup>15/</sup> See AT&T Comments at 4 n.\*\*.

<sup>16/</sup> See LDDS Communications, Inc. Comments at 4-5, 8-9.

Finally, AT&T has relied on inapposite "apples and oranges" analogies, attempting to compare its CIID card to commercial credit cards such as a Sears credit card used for the purchase of goods from Sears.<sup>17/</sup> Such strained analogies are meaningless given the use of and reliance upon 0+ dialing in the current presubscription environment. In the case of a Sears card, the cardholder is physically in a Sears store or has dialed a Sears order department "access" telephone number to make a purchase. In AT&T's case, AT&T tells cardholders always to use the card by dialing 0+ at all locations even though AT&T knows full well such use will not always reach AT&T. For AT&T's analogy to work, Sears would have to instruct its cardholders to attempt to use the Sears card at all other stores -- thereby causing inconvenience to cardholders and to its competitors, whose employees would have to explain why the Sears card was not accepted. It is impossible to believe that Sears or any other proprietary card issuer (other than AT&T, of course) would have the arrogance to use its cardholders in this way, and then to defend its actions by claiming that it is trying to "protect" them.

AT&T deliberately issued its CIID cards with instructions to dial 0+ at every telephone. As numerous parties have shown in this proceeding, AT&T did so without regard for the rules the Commission has required all operator service providers to follow to ensure that consumers have informed carrier choice in the market, or for the Commission's desire for this market to be competitive. In the process, consumers, who are AT&T's pawns in its competitive maneuvers, are becoming increasingly confused about their calling card options,<sup>18/</sup> and AT&T's

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<sup>17/</sup> See AT&T Comments at 2 n.\*\*.

<sup>18/</sup> The Commission has issued a Public Notice, "Telephone Calling Cards," DA 92-666 (released June 8, 1992) to answer questions the FCC commonly receives related to consumer calling cards options and use.



competitors are experiencing rising costs, lower revenues and stifled competitive opportunities in the presubscription market.

### **CONCLUSION**

The record in this proceeding firmly supports the adoption of the proposed rule to preserve competition and choice for consumers in the operator services market. Through its policies and rules for operator service providers, the Commission has sought to serve those objectives. AT&T's distribution of a proprietary calling card used with 0+ access is subverting the achievement of these goals. Accordingly, ZPDI urges the Commission to adopt the proposed rule to restore 0+ dialing to the public domain, preserve consumer choice and convenience, and provide regulatory certainty to all carriers.

Respectfully submitted,

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June 17, 1992

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of June 1992, copies of Reply Comments of Zero Plus Dialing, Inc. were served by hand delivery upon the following:

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